IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 21ST NOVEMBER 2007 / 30TH KARTHIKA 1929

Bail Appl..No. 7140 of 2007()

SC.378/1999 of SPL. COURT (NDPS ACT CASES), TRIVANDRUM

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PETITIONER/ACCUSED 2

SHANAVAS,SAJAD MANZIL,
VALLAKADAVU,THIRUVANANTHAPURAM.

BY ADV. SRI.P.S.ABDUL KAREEM

RESPONDENT/COMPLAINANT:

A.R.ASOK KUMAR, SUPERINTENDENT OF
CENTRAL EXCISE, CUSTOMS PREVENTIVE AND
INTELLIGENCE UNIT,THIRUVANANTHAPURAM REPRESENTED
BY THE CENTRAL GOVERNMENT STANDING COUNSEL.

BY PUBLIC PROSECUTOR SRI. S.U. NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 7140 of 2007

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Dated this the 21st day of November, 2007

O R D E R

The petitioner faces indictment in a prosecution under Sections 21, 28 and 23 of the N.D.P.S. Act and Section 135 of the Customs Act. Final report has already been filed. Cognizance has been taken by the learned Magistrate. He was not available for trial. The first accused was tried, found not guilty and acquitted by the Sessions Judge. The petitioner had earlier come to this Court with a prayer that the prosecution against him may also be quashed, the first accused having already been acquitted. But it was brought to the notice of the court that an appeal against the said acquittal has been filed along with a petition for condonation of delay. Accordingly the said Crl.M.C. for quashing the proceedings was dismissed.

2. Consequent to the non-appearance of the petitioner before the learned Sessions Judge, steps are being taken against

the petitioner. In these circumstances the petitioner has come to this Court with a prayer for grant of anticipatory bail.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The first accused having already been acquitted, the petitioner may be granted anticipatory bail, it is prayed. The petitioner is willing to surrender before the learned Sessions Judge. But he apprehends that if he surrenders, his application for regular bail may not be considered by the learned Sessions Judge on merits, in accordance with law and expeditiously. It is hence that he prays that directions under Section 438 and/or 482 Cr.P.C. may be issued in his favour.

2. The learned Prosecutor opposes the application for anticipatory bail. There is absolutely no justification in the prayer for grant of anticipatory bail to the petitioner. He may be directed to resort to the ordinary and normal procedure of appearing before the Sessions Judge and then seek regular bail.

3. It is trite after the decision in **Bharat Chaudhary** v. **State of Bihar** (AIR 2003 SC 4662) that powers under Section 438 Cr.P.C.

can be invoked even in favour of a petitioner, who apprehends arrest in the pending case on the strength of a non-bailable warrant issued by the court. Even that is not by itself sufficient to justify the invocation of the jurisdiction under Section 438 Cr.P.C. I am unable to find any compelling reasons which would justify invocation of the jurisdiction under Section 438 Cr.P.C.

6. It is certainly for the petitioner to appear before the learned Sessions Judge and explain to the learned Judge the circumstances under which he could not earlier appear before the learned Judge. I have no reason to assume that the learned Judge would not consider the application for bail to be filed by the petitioner when he surrenders before the learned Judge, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in **Alice George** v. **Dy.S.P. of Police** (2003 (1) KLT 339).

7. This application is accordingly dismissed. I may however hasten to observe that if the petitioner appears before the learned

Sessions Judge and applies for regular bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R. BASANT)
Judge

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